

INTRODUCTION

A. Overview of Clean Water Act Sections 404 and 401

The five basic steps of the Section 404/401 process, and some of the key terms and documents pertaining to each step, are summarized below. The following information is not inclusive—details are provided in this manual, beginning on page Step 1-1.

Step 1	Are waters of the US present? § Complete a jurisdictional delineation <ul style="list-style-type: none">○ Key components: aerial photograph, topographic map, ground photographs, text and/or table describing site conditions
Step 2	Would the activity result in a discharge of dredged or fill material into waters of the US? Is the activity exempt from regulation?
Step 3	Would the impact on waters of the US be a temporary disturbance or a permanent loss? What quantity of impact on waters of the US would result from the activity? § Most commonly quantified in surface area/acreage, cubic yards, or linear feet What mitigation measures would be feasible and prudent? § Types: avoidance, minimization, rectification, reduction, compensation
Step 4	Can the activity be authorized under a Nationwide Permit or is an Individual Permit required? Nationwide Permit What type of permit is required? § Select from 43 Nationwide Permits Is preconstruction notification required? § No—non-notifying § Yes <ul style="list-style-type: none">○ Key components: topographic map, ENG Form 4345, plan sheets depicting impacts, General Conditions Compliance, mitigation plan if applicable Individual Permit § Key components: topographic map, ENG Form 4345, plan sheets depicting impacts, Section 404(b)(1) draft decision document, mitigation plan if applicable, copy of Section 401 Individual Certification application
Step 5	Is the activity certified under Section 401? § Certified § Conditionally certified § Individual certification required <ul style="list-style-type: none">○ Key components: vary depending on agency/tribe with oversight

B. Quick Facts

1. Regulation and Administration

The 1972 Federal Water Pollution Control Act was amended and became commonly known as the Clean Water Act (CWA) in 1977. The CWA "...established the basic structure for regulating discharges of pollutants into the waters of the United States" (U.S. Environmental Protection Agency 2003a). The objective of the CWA "...is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters" (33 U.S. Code 1251-1387).

Section 404 of the CWA regulates the discharge of fill material into waters of the US. Section 401 requires that the state provide certification that any activity authorized under Section 404 is in compliance with effluent limits, the state's water quality standards, and any other appropriate requirements of state law.

The U.S. Army Corps of Engineers (Corps) administers the day-to-day CWA Section 404 program, develops policy and guidance, and enforces Section 404 provisions. The U.S. Environmental Protection Agency (EPA) develops and interprets environmental criteria used in evaluating Section 404 permit applications, identifies activities that are exempt from Section 404 regulation, and assists the Corps in enforcing Section 404 provisions (EPA 2003b).

In Arizona, the CWA Section 401 water quality certification program is administered by the EPA, White Mountain Apache Tribe (WMAT), or Arizona Department of Environmental Quality (ADEQ), depending on the type and location of the activity.

2. Examples of Regulated Arizona Department of Transportation Activities

Common Arizona Department of Transportation (ADOT) activities that require Section 404 and Section 401 compliance, if conducted within waters of the US, include but are not limited to:

- § culvert extensions and installations
- § bridge scour countermeasures and bridge pier construction
- § channel bank protection
- § wash realignment and channelization
- § roadway and utility crossings
- § geotechnical borings
- § the removal of sediment buildup from culverts



3. Examples of Key Terms

Waters of the US commonly found in Arizona include but are not limited to:

- § washes
- § rivers and streams
- § natural ponds
- § wetlands
- § certain canals

The most common dredged (excavated) materials resulting from ADOT activities are:

- § sand
- § soil
- § gravel

Fill materials commonly used during ADOT activities include but are not limited to:

- § soil
- § concrete and pavement
- § riprap
- § steel



4. Coordination Policies

EEG has established coordination policies for all ADOT activities requiring a Section 404 permit and/or Section 401 certification. Two of the most important requirements pertain to the review and submittal of Section 404 and Section 401 documentation. These requirements are discussed below and referenced throughout the manual as appropriate.

Close coordination between EEG personnel (staff and/or consultants) and design personnel is critical to ensure that Section 404 and Section 401 calculations and documentation are accurate. Typically, design personnel provide important activity scope and impact information to EEG personnel for inclusion in the Section 404 and Section 401 documentation.

In addition, design personnel and District staff must be provided the opportunity to review all Section 404 or Section 401 conditions and mitigation measures applicable to an activity in order to identify construction constraints as early as possible. Conditions and mitigation measures are ultimately included in the environmental clearance and/or project specifications, as appropriate.

EEG staff review and approve all Section 404 and Section 401 documentation for all ADOT activities. EEG staff also submit all documentation to the pertinent agency or tribe for consideration and approval; EEG consultants are not authorized to submit documentation directly to the pertinent agency or tribe.

5. Contact Information (As of 2/05)

Department of the Army
Los Angeles District, Corps of Engineers
Arizona-Nevada Area Office
3636 North Central Avenue, Suite 900
Phoenix, Arizona 85012
Phone: (602) 640-5385
Fax: (602) 640-5382

Arizona Department of Environmental Quality
Surface Water Permitting Unit
1110 West Washington Street
Phoenix, Arizona 85007
Phone: (602) 771-4665
Fax: (602) 771-4674

U.S. Environmental Protection Agency
Region IX, San Francisco Office
Mail Code WTR 8
75 Hawthorn Street
San Francisco, California 94105
Phone: (415) 972-3483
Fax: (415) 747-3537

White Mountain Apache Tribe
Environmental Planning Office
PO Box 700
Whiteriver, Arizona 85941
Phone: (928) 338-4346 ext. 223
Fax: (928) 338-1514

C. EEG Section 404/401 Flow Charts

Two flow charts were developed by EEG to graphically depict the Section 404 and 401 processes as they apply to ADOT activities (EEG 2004a). The flow charts have been reformatted for printing, and are provided on the following pages.

D. Manual Content, Format, and Update Process

1. Content

This manual focuses on the Section 404/401 process as it relates to ADOT activities. As such, the manual discusses some documentation components and coordination policies required by EEG, above and beyond the requirements of the agency or tribe that will consider and approve the activity. Therefore, it is critical that ADOT activity proponents comply with the specific Section 404/401 policies and standards established by EEG for all ADOT activities.

2. Format

The following sections of the manual describe the Section 404 and 401 processes as a series of five consecutive steps. At each step, readers are prompted to evaluate their activity to determine regulatory applicability and compliance requirements. Many regulatory excerpts, guidance documents, and forms are included as Attachments 1-11 (shorter documents) and Appendices 1-5 (longer documents).

On-line sources for the following documents are identified in the manual text. Due to their size, hard copies of these documents are not included in the manual.

§ Corps of Engineers Wetlands Delineation Manual

§ Corps Special Public Notice—Final Mitigation Guidelines and Monitoring Requirements

Acronyms that are common to the Section 404 and/or 401 processes and are used in the manual are defined in a list following Attachment 11. A glossary of applicable terms is also provided following the acronym list, including common definitions compiled from several pertinent sources. Terms defined in the glossary are identified in **bold-face type** where first used in the manual.



3. Update Process

EEG will periodically update this manual to ensure consistency with regulatory and guidance modifications and ADOT policy changes. However, it is the responsibility of the reader to identify and comply with current standards.